

AMENDED IN SENATE APRIL 12, 2011

AMENDED IN SENATE MARCH 10, 2011

**SENATE BILL**

**No. 182**

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**Introduced by Senator Corbett**  
**(Coauthors: Senators Hancock, Kehoe, and Leno)**  
(Coauthor: Assembly Member Ammiano)

February 7, 2011

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An act to amend Section 12011.5 of the Government Code, relating to judicial appointments.

LEGISLATIVE COUNSEL'S DIGEST

SB 182, as amended, Corbett. Judiciary: demographic data.

Existing law requires the Governor, the designated agency of the State Bar responsible for the evaluation of judicial candidates, and the Administrative Office of the Courts to annually collect demographic data relating to judicial applicants, judicial appointees or nominees, judicial candidates, and justices and judges, as specified, relative to ethnicity, race, and gender. These entities are required to release the demographic data on or before March 1 of each year.

This bill would expand these provisions to include the collection and release of demographic data relative to gender identity and sexual orientation.

~~This orientation.~~ This bill would require a departing Governor to provide the *demographic data collected for the year* to the incoming Governor, as specified. ~~This~~ The bill would require the incoming Governor to release the ~~necessary provided demographic data~~ data, as prescribed. *The bill also would require any demographic data disclosed or released pursuant to these provisions to also indicate the percentage of respondents who declined to respond.*

This bill would also make technical changes.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 12011.5 of the Government Code is  
2 amended to read:

3 12011.5. (a) In the event of a vacancy in a judicial office to  
4 be filled by appointment of the Governor, or in the event that a  
5 declaration of candidacy is not filed by a judge and the Governor  
6 is required under subdivision (d) of Section 16 of Article VI of the  
7 Constitution to nominate a candidate, the Governor shall first  
8 submit to a designated agency of the State Bar of California the  
9 names of all potential appointees or nominees for the judicial office  
10 for evaluation of their judicial qualifications.

11 (b) The membership of the designated agency of the State Bar  
12 responsible for evaluation of judicial candidates shall consist of  
13 attorney members and public members with the ratio of public  
14 members to attorney members determined, to the extent practical,  
15 by the ratio established in Sections 6013.4 and 6013.5 of the  
16 Business and Professions Code. It is the intent of this subdivision  
17 that the designated agency of the State Bar responsible for  
18 evaluation of judicial candidates shall be broadly representative  
19 of the ethnic, gender, and racial diversity of the population of  
20 California and composed in accordance with Sections 11140 and  
21 11141 of the Government Code. The further intent of this  
22 subdivision is to establish a selection process for membership on  
23 the designated agency of the State Bar responsible for evaluation  
24 of judicial candidates under which no member of that agency shall  
25 provide inappropriate, multiple representation for purposes of this  
26 subdivision.

27 (c) Upon receipt from the Governor of the names of candidates  
28 for judicial office and their completed personal data questionnaires,  
29 the State Bar shall employ appropriate confidential procedures to  
30 evaluate and determine the qualifications of each candidate with  
31 regard to his or her ability to discharge the judicial duties of the  
32 office to which the appointment or nomination shall be made.  
33 Within 90 days of submission by the Governor of the name of a  
34 potential appointee for judicial office, the State Bar shall report in

1 confidence to the Governor its recommendation whether the  
2 candidate is exceptionally well qualified, well qualified, qualified,  
3 or not qualified and the reasons therefor, and may report, in  
4 confidence, other information as the State Bar deems pertinent to  
5 the qualifications of the candidate.

6 (d) In determining the qualifications of a candidate for judicial  
7 office, the State Bar shall consider, among other appropriate  
8 factors, his or her industry, judicial temperament, honesty,  
9 objectivity, community respect, integrity, health, ability, and legal  
10 experience. The State Bar shall consider legal experience broadly,  
11 including, but not limited to, litigation and nonlitigation experience,  
12 legal work for a business or nonprofit entity, experience as a law  
13 professor or other academic position, legal work in any of the three  
14 branches of government, and legal work in dispute resolution.

15 (e) The State Bar shall establish and promulgate rules and  
16 procedures regarding the investigation of the qualifications of  
17 candidates for judicial office by the designated agency. These rules  
18 and procedures shall establish appropriate, confidential methods  
19 for disclosing to the candidate the subject matter of substantial and  
20 credible adverse allegations received regarding the candidate's  
21 health, physical or mental condition, or moral turpitude which,  
22 unless rebutted, would be determinative of the candidate's  
23 unsuitability for judicial office. No provision of this section shall  
24 be construed as requiring that any rule or procedure be adopted  
25 that permits the disclosure to the candidate of information from  
26 which the candidate may infer the source, and no information shall  
27 either be disclosed to the candidate nor be obtainable by any  
28 process that would jeopardize the confidentiality of  
29 communications from persons whose opinion has been sought on  
30 the candidate's qualifications.

31 (f) All communications, written, verbal, or otherwise, of and to  
32 the Governor, the Governor's authorized agents or employees,  
33 including, but not limited to, the Governor's Legal Affairs  
34 Secretary and Appointments Secretary, or of and to the State Bar  
35 in furtherance of the purposes of this section are absolutely  
36 privileged from disclosure and confidential, and any  
37 communication made in the discretion of the Governor or the State  
38 Bar with a candidate or person providing information in furtherance  
39 of the purposes of this section shall not constitute a waiver of the  
40 privilege or a breach of confidentiality.

1 (g) If the Governor has appointed a person to a trial court who  
2 has been found not qualified by the designated agency, the State  
3 Bar may make public this fact after due notice to the appointee of  
4 its intention to do so, but that notice or disclosure shall not  
5 constitute a waiver of privilege or breach of confidentiality with  
6 respect to communications of or to the State Bar concerning the  
7 qualifications of the appointee.

8 (h) If the Governor has nominated or appointed a person to the  
9 Supreme Court or court of appeal in accordance with subdivision  
10 (d) of Section 16 of Article VI of the California Constitution, the  
11 Commission on Judicial Appointments may invite, or the State  
12 Bar's governing board or its designated agency may submit to the  
13 commission its recommendation, and the reasons therefor, but that  
14 disclosure shall not constitute a waiver of privilege or breach of  
15 confidentiality with respect to communications of or to the State  
16 Bar concerning the qualifications of the nominee or appointee.

17 (i) No person or entity shall be liable for any injury caused by  
18 any act or failure to act, be it negligent, intentional, discretionary,  
19 or otherwise, in the furtherance of the purposes of this section,  
20 including, but not limited to, providing or receiving any  
21 information, making any recommendations, and giving any reasons  
22 therefor. As used in this section, the term "State Bar" means its  
23 governing board and members thereof, the designated agency of  
24 the State Bar and members thereof, and employees and agents of  
25 the State Bar.

26 (j) At any time prior to the receipt of the report from the State  
27 Bar specified in subdivision (c) the Governor may withdraw the  
28 name of any person submitted to the State Bar for evaluation  
29 pursuant to this section.

30 (k) No candidate for judicial office may be appointed until the  
31 State Bar has reported to the Governor pursuant to this section, or  
32 until 90 days have elapsed after submission of the candidate's  
33 name to the State Bar, whichever occurs earlier. The requirement  
34 of this subdivision shall not apply to any vacancy in judicial office  
35 occurring within the 90 days preceding the expiration of the  
36 Governor's term of office, provided, however, that with respect  
37 to those vacancies and with respect to nominations pursuant to  
38 subdivision (d) of Section 16 of Article VI of the California  
39 Constitution, the Governor shall be required to submit any

1 candidate's name to the State Bar in order to provide an  
2 opportunity, if time permits, to make an evaluation.

3 (l) Nothing in this section shall be construed as imposing an  
4 additional requirement for an appointment or nomination to judicial  
5 office, nor shall anything in this section be construed as adding  
6 any additional qualifications for the office of a judge.

7 (m) The Board of Governors of the State Bar shall not conduct  
8 or participate in, or authorize any committee, agency, employee,  
9 or commission of the State Bar to conduct or participate in, any  
10 evaluation, review, or report on the qualifications, integrity,  
11 diligence, or judicial ability of any specific justice of a court  
12 provided for in Section 2 or 3 of Article VI of the California  
13 Constitution without prior review and statutory authorization by  
14 the Legislature, except an evaluation, review, or report on potential  
15 judicial appointees or nominees as authorized by this section.

16 The provisions of this subdivision shall not be construed to  
17 prohibit a member of the State Bar from conducting or participating  
18 in an evaluation, review, or report in his or her individual capacity.

19 (n) (1) Notwithstanding any other provision of this section, but  
20 subject to paragraph (2), on or before March 1 of each year, all of  
21 the following shall occur:

22 (A) The Governor shall collect and release, on an aggregate  
23 statewide basis, all of the following:

24 (i) Demographic data provided by all judicial applicants relative  
25 to ethnicity, race, gender, gender identity, and sexual orientation.

26 (ii) Demographic data relative to ethnicity, race, gender, gender  
27 identity, and sexual orientation, as provided by all judicial  
28 applicants, both as to those judicial applicants who have been and  
29 those who have not been submitted to the State Bar for evaluation.

30 (iii) Demographic data relative to ethnicity, race, gender, gender  
31 identity, and sexual orientation of all judicial appointments or  
32 nominations, as provided by the judicial appointee or nominee.

33 (B) The designated agency of the State Bar responsible for  
34 evaluation of judicial candidates shall collect and release both of  
35 the following on an aggregate statewide basis:

36 (i) Statewide demographic data provided by all judicial  
37 applicants reviewed relative to ethnicity, race, gender, gender  
38 identity, sexual orientation, and areas of legal practice and  
39 employment.

1 (ii) The statewide summary of the recommendations of the  
2 designated agency of the State Bar by ethnicity, race, gender,  
3 gender identity, sexual orientation, and areas of legal practice and  
4 employment.

5 (C) The Administrative Office of the Courts shall collect and  
6 release the demographic data provided by justices and judges  
7 described in Article VI of the California Constitution relative to  
8 ethnicity, race, gender, gender identity, and sexual orientation by  
9 specific jurisdiction.

10 (2) For purposes of subparagraph (A) of paragraph (1), in the  
11 year following a general election or recall election that will result  
12 in a new Governor taking office prior to March 1, the departing  
13 Governor shall provide all of the demographic data collected for  
14 the year by that Governor pursuant to this subdivision to the  
15 incoming Governor. The incoming Governor shall then be  
16 responsible for releasing the provided demographic data, and the  
17 demographic data collected by that incoming Governor, if any,  
18 prior to the March 1 deadline imposed pursuant to this subdivision.

19 (3) Any demographic data disclosed or released pursuant to this  
20 subdivision shall disclose only aggregated statistical data and shall  
21 not identify any individual applicant, justice, or judge.

22 (4) *Any demographic data disclosed or released pursuant to*  
23 *this subdivision shall also indicate the percentage of respondents*  
24 *who declined to respond.*

25 (o) If any provision of this section other than a provision relating  
26 to or providing for confidentiality or privilege from disclosure of  
27 any communication or matter, or the application of the provision  
28 to any person or circumstances, is held invalid, the remainder of  
29 this section to the extent it can be given effect, or the application  
30 of the provision to persons or circumstances other than those as  
31 to which it is held invalid, shall not be affected thereby, and to this  
32 extent the provisions of this section are severable. If any other act  
33 of the Legislature conflicts with the provisions of this section, this  
34 section shall prevail.